

**James Madison to M. L. Hurlbut, May, 1830.**

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**TO M. L. HURLBERT. Mad. Mss.**

Montpr. May 1830.

I recd. Sir, tho' not exactly in the due time, your letter of April 25, with a copy of your pamphlet, on the subject of which you request my opinions.

With a request opening so wide a field, I could not undertake a full compliance, without forgetting the age at which it finds me, and that I have other engagements precluding such a task. I must hope therefore you will accept in place of it, a few remarks which tho' not adapted to the use you had contemplated, may manifest my respect for your wishes, and for the subject which prompted them.

The pamphlet certainly evinces a very strong pen, & talents adequate to the discussion of constitutional topics of the most interesting class. But in doing it this justice, and adding with pleasure, that it contains much matter with which my views of the Constitution of the U. S. accord; I must add also that it contains views of the Constitution from which mine widely differ.

I refer particularly to the construction you seem to put on the introductory clause "We the people" and on the phrases "common defence & genl. welfare." Either of these, if taken as a measure of the powers of the Genl. Govt. would supersede the elaborated specifications which compose the Body of the Instrument, in contravention to the fairest

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rules of interpretation. And if I am to answer your appeal to me as a witness, I must say that the real measure of the powers meant to be granted to Congress by the Convention, as I understood and believe, is to be sought in the specifications, to be expounded indeed not with the strictness applied to an ordinary statute by a Court of Law; nor on the other hand with a latitude that under the name of means for carrying into execution a limited Government, would transform it into a Government without limits.

But whatever respect may be thought due to the intention of the Convention, which prepared & proposed the Constitution, as presumptive evidence of the general understanding at the time of the language used, it must be kept in mind that the only authoritative intentions were those of the people of the States, as expressed thro' the Conventions which ratified the Constitution.

That in a Constitution, so new, and so complicated, there should be occasional difficulties & differences in the practical expositions of it, can surprize no one; and this must continue to be the case, as happens to new laws on complex subjects, until a course of practice of sufficient uniformity and duration to carry with it the public sanction shall settle doubtful or contested meanings.

As there are legal rules for interpreting laws, there must be analogous rules for interpreting constns. and among the obvious and just guides applicable to the Constn. of the U. S. may be mentioned—

1. The evils & defects for curing which the Constitution was called for & introduced.
2. The comments prevailing at the time it was adopted.
3. The early, deliberate & continued practice under the Constitution, as preferable to constructions adapted on the spur of occasions, and subject to the vicissitudes of party or personal ascendencies.

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On recurring to the origin of the Constitution and examining the structure of the Govt. we perceive that it is neither a Federal Govt. created by the State Govts. like the Revolutionary Congress; nor a consolidated Govt. (as that term is now applied,) created by the people of the U. S. as one community, and as such acting by a numerical majority of the whole.

The facts of the case which must decide its true character, a character without a prototype, are that the Constitution was created by the people, but by the people as composing distinct States, and acting by a majority in each:

That, being derived from the same source as the constitutions of the States, it has within each State, the same authority as the Constitution of the State, and is as much a Constitution, in the strict sense of the term, as the constitution of the State:

That, being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it is not revocable or alterable at the will of the States individually, as the constitution of a State is revocable & alterable at its individual will:

That the sovereign or supreme powers of Govt. are divided into the separate depositories of the Govt. of the U. S. and the Govts. of the individual States:

That the Govt. of the U. S. is a Govt. in as strict a sense of the term, as the Govts. of the States; being, like them, organized into Legislative, Executive & Judiciary depts. operating, like them, directly on persons & things, and having like them the command of a physical force for executing the powers committed to it:

That the supreme powers of Govt. being divided between different Govts. and controversies as to the landmarks of jurisdiction being unavoidable, provision for a peaceable & authoritative decision of them was obviously essential:

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That, to leave this decision to the States, numerous as they were & with a prospective increase, would evidently result in conflicting decisions subversive of the common Govt. and of the Union itself:

That, according to the actual provision against such calamities, the Constitution & laws of the U. S. are declared to be paramount to those of the individual States, & an appellate supremacy is vested in the Judicial power of the U. S.:

That as safeguards agst. usurpations and abuses of power by the Govt. of the U. S. the members of its Legislative and the head of its Executive Department, are eligible by & responsible to, the people of the States or the Legislatures of the States; and as well the Judicial as the Executive functionaries including the head, are impeachable by the Representatives of the people in one branch of the Legislature of the U. S. and triable by the Representatives of the States in the other Branch:

States can, through forms of the constl. elective provisions, controul the Genl. Govt. This has no agency in electing State Govts., & can only controul them through the functionaries particularly the Judiciary of the General Government:

That in case of an experienced inadequacy of these provisions, an ulterior resort is provided in amendments attainable by an intervention of the States, which may better adapt the Constitution for the purposes of its creation.

Should all these provisions fail, and a degree of oppression ensue, rendering resistance & revolution a lesser evil than a longer passive obedience, there can remain but the ultima ratio, applicable to extreme cases, whether between nations or the component parts of them.

Such, Sir, I take to be an outline view, tho' an imperfect one, of the pol: system presented in the Constitution of the U. S. Whether it be the best system that might have been devised, or what the improvements that might be made in it, are questions equally

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beyond the scope of your letter and that of the answer, with which I pray you to accept my respects and good wishes.